

ESTTA Tracking number: **ESTTA331569**

Filing date: **02/11/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Joe's Jeans, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	7 Times Square c/o Pryor Cashman LLP New York, NY 10036 UNITED STATES		

Attorney information	Nicole E. Kaplan Pryor Cashman LLP 7 Times Square New York, NY 10036 UNITED STATES mshine@pryorcashman.com, nkaplan@pryorcashman.com Phone:212-326-0417
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Registrations Subject to Cancellation

Registration No	3148186	Registration date	09/26/2006
Registrant	BRIXTON, LLC 4040 Calle Platino #102 Oceanside, CA 92056 UNITED STATES		

Goods/Services Subject to Cancellation

Class 025. First Use: 2005/05/01 First Use In Commerce: 2005/05/01

All goods and services in the class are cancelled, namely: Clothing; namely, shirts, T-shirts, tank tops, undershirts, night shirts, sweaters, sweatshirts, vests, jackets, coats, ties, belts for clothing, pants, trousers, shorts, boxer shorts, underwear, briefs, pajama tops, pajama bottoms, sweatpants, dresses, skirts, swimwear, board shorts, hosiery, socks, jogging suits, bandannas, neckerchiefs, scarves, rain coats, wind-resistant jackets, aprons, bath robes, wet suits, gloves, mittens and Headwear, namely, hats, caps and visors and head bands; and Footwear, namely, athletic footwear, casual footwear, boots, sandals and beach footwear

Grounds for Cancellation

False suggestion of a connection	Trademark Act section 2(a)		
Registration No	3511902	Registration date	10/07/2008
Registrant	Brixton, LLC 4040 Calle Platino #102 Oceanside, CA 92056 UNITED STATES		

Goods/Services Subject to Cancellation

Class 025. First Use: 2004/06/15 First Use In Commerce: 2005/06/30

All goods and services in the class are cancelled, namely: Clothing, namely, shirts, T-shirts, tank tops, undershirts, sweaters, sweatshirts, vests, jackets, coats, ties, belts for clothing, pants, trousers, socks, neckerchiefs, scarves, rain coats, wind-resistant jackets, gloves, and mittens; and Headwear, namely, hats, caps and visors, beanies and head bands

Grounds for Cancellation

False suggestion of a connection	Trademark Act section 2(a)		
Registration No	3109807	Registration date	06/27/2006
Registrant	BRIXTON, LLC 4040 Calle Platino #102 Oceanside, CA 92056 UNITED STATES		

Goods/Services Subject to Cancellation

Class 025. First Use: 2004/06/15 First Use In Commerce: 2005/06/30
All goods and services in the class are cancelled, namely: Clothing; namely, shirts, T-shirts, tank tops, undershirts, night shirts, sweaters, sweatshirts, vests, jackets, coats, ties, belts for clothing, pants, trousers, shorts, boxer shorts, underwear, briefs, pajama tops, pajama bottoms, sweatpants, dresses, skirts, swimwear, board shorts, hosiery, socks, jogging suits, bandannas, neckerchiefs, scarves, rain coats, wind-resistant jackets, aprons, bath robes, wet suits, gloves, mittens and Headwear, namely, hats, caps and visors and head bands; and Footwear, namely, athletic footwear, casual footwear, boots, sandals and beach footwear

Grounds for Cancellation

False suggestion of a connection	Trademark Act section 2(a)
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Attachments	BRIXTON_Cancel.PDF (6 pages)(238839 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Nicole E. Kaplan/
Name	Nicole E. Kaplan
Date	02/11/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of United States Trademark
Registration Nos. 3148186, 3511902 and 3109807

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JOE'S JEANS, INC.	:	
	:	
Petitioner,	:	Cancellation No.
	:	
v.	:	
	:	
BRIXTON, LLC d/b/a BRIXTON LTD,	:	
	:	
Respondent.	:	

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PETITION FOR CANCELLATION

Petitioner Joe's Jeans, Inc. ("Joe's Jeans"), a Delaware corporation with a principal place of business at 5901 S. Eastern Ave., Commerce, CA 90040, believes that it is being and will continue to be damaged by U.S. Trademark Registration Nos. 3148186, 3511902 and 3109807 owned by respondent Brixton, LLC d/b/a Brixton Ltd. ("Respondent"), and hereby petitions to cancel said registrations pursuant to 15 U.S.C. §1064 and 37 C.F.R. §2.111. As grounds therefor, Joe's Jeans alleges that:

Joe's Jeans And Its Premium Denim Products

1. Joe's Jeans designs, sources and distributes its Joe's® and Joe's Jeans™ branded apparel products to over 1,200 retail establishments in the United States and abroad. Because of its high-quality materials and cutting edge designs, Joe's Jeans is one of the most recognized premium denim brands in the United States of America.

2. Although Joe's Jeans is renowned for its premium denim jean products for men, women and children, Joe's Jeans has, over the past five years, expanded and grown its brand into men's, women's and children's woven apparel in the nature of pants and tops, as well as outerwear, handbags and other accessories.

3. Joe's Jeans spends substantial amounts of money each year advertising and promoting its products and has received substantial international and national publicity with respect to its apparel items and fashions accessories. Indeed, Joe's Jeans has enjoyed unsolicited media attention from some of the nation's most widely circulated publications such as *In Style Magazine*, *People Magazine*, *Glamour*, *Elle Magazine*, *Teen Vogue*, *Lucky*, *In Touch*, and several others. In addition, Joe's Jeans' products have been prominently worn by numerous high-profile celebrities, including but not limited to Beyonce, Katie Holmes, Justin Timberlake, Brad Pitt, Matthew Perry, Britney Spears, Jennifer Lopez, Madonna and Cameron Diaz.

4. As a result of Joe's Jeans' exacting standards, its vigorous promotion of its products and the publicity generated for its products by the celebrities who wear Joe's Jeans' products, Joe's Jeans' clothing has come to symbolize quality in the eyes of the consuming public.

Joe's Jeans' Creation and Use of the BRIXTON Mark

5. Joe's Jeans began using the BRIXTON Mark at least as early as February 5, 2004 and began shipping goods bearing the BRIXTON Mark at least as early as July 2004.

6. The BRIXTON Mark has been prominently and continuously used by Joe's Jeans in commerce as a sub-brand to denominate a specific and highly-demanded style of Joe's Jeans' premium denim jeans.

7. Joe's Jeans has made and continues to make prominent use of its BRIXTON Mark in commerce on its jeans. The BRIXTON Mark is boldly emblazoned in at least three locations on the jeans: (a) on a large white tag on the back of its jeans; (b) in large letters across the inside back waistline; and (c) on the "made in" label sewn into the interior waistline of the jeans. Joe's Jeans features its BRIXTON Mark in this manner to ensure that the consuming public associates the name for this particular style of jeans solely with Joe's.

8. Joe's Jeans' BRIXTON jeans are extremely popular and are worn by, among other, prominent celebrities such as Will Smith and Tom Cruise.

Brixton's Infringing Use of Joe's' BRIXTON Mark

9. Although Joe's Jeans has never authorized Respondent to utilize Joe's Jeans' BRIXTON Mark in any manner, Respondent has been using and secured the following three registrations for the mark BRIXTON in connection with goods in Class 25: (a) No. 3148186 for the mark B BRIXTON LTD & Design; (b) No. 3109807 for the mark BRIXTON; and (c) No. 3511902 for the mark BRIXTON. These three registrations and the marks covered thereby shall hereafter collectively be referred to as "Respondent's Marks."

10. Upon information and belief, Respondent began using Respondent's Marks in commerce in May or June of 2005 – over one year after Joe's Jeans first began using the BRIXTON Mark. In fact, Respondent itself was not formed until almost one year after Joe's Jeans began using the BRIXTON mark and almost six months after Joe's Jeans began shipping its BRIXTON merchandise.

11. Upon information and belief, Respondent is using Respondent's Marks to sell apparel products – the same goods sold by Joe's Jeans under its BRIXTON Mark – to the same or similar consumer base as Joe's Jeans, using the exact same trademark as that owned and used

by Joe's Jeans. Thus, consumers are being misled into believing that the goods sold under Respondent's Marks (hereafter collectively referred to as the "Infringing Merchandise") are genuine Joe's Jeans' merchandise when, in fact, they are not.

12. Upon information and belief, Respondent has continued to willfully sell, distribute, manufacture, import, advertise, market and/or promote the Infringing Merchandise, all in the face of and with full knowledge of Joe's Jeans' rights in and to the BRIXTON Mark in connection with clothing.

13. On July 1, 2009, shortly after learning of Respondent's infringing activities, Joe's Jeans commenced an action for trademark infringement against Respondent in the United States District Court for the Central District of California, Western Division, CV No. 09-04753. This litigation is currently pending.

14. By reason of the similarity of the marks, and the fact that the goods and channels of trade are the same and/or substantially related, Respondent's use of the Respondent's Marks, all of which either embody or incorporate the term BRIXTON, are likely to cause confusion with Joe's Jeans' BRIXTON trademark.

15. The consuming public, upon seeing Respondent's Marks in association with Respondent's goods, is likely to believe that the goods are made, endorsed or sponsored by Joe's Jeans, or that there is a trade connection or affiliation between Respondent and its goods, on the one hand, and Joe's Jeans and its goods, on the other, when, in fact, no such affiliation or sponsorship exists.

16. Joe's Jeans is the prior user of the mark BRIXTON for apparel items in Class 25. Joe's Jeans and its business interests will be damaged by if Respondent is permitted to maintain its registrations of virtually identical marks. To be sure, any faults or defects that might be found

in Respondent's goods would reflect adversely upon and seriously injure the valuable reputation and good will of Joe's Jeans.

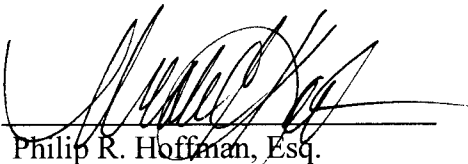
WHEREFORE, Joe's Jeans believes that it is being and will continue to be damaged by Respondent's Marks and respectfully petitions that the subject registrations be canceled in their entirety. The USPTO is permitted to charge the required filing fee of \$900.00 to Deposit Acct. No. 500-932.

POWER OF ATTORNEY

Petitioner hereby appoints Brad D. Rose, Philip R. Hoffman, Nicole E. Kaplan and Philippe Zylberg, members of the Bar of the State of New York, whose address is Pryor Cashman LLP, 7 Times Square, New York, New York 10036-6569, (212) 421-4100, as its duly authorized agents and attorneys in this matter to transact all business in the Patent and Trademark Office and in the United States Courts in connection with the Petition for Cancellation, to sign their names to all papers which may be hereinafter filed in connection therewith and to receive all communications relating to same.

Dated: New York, New York
February 9, 2010

PRYOR CASHMAN LLP

By: 
Philip R. Hoffman, Esq.
Nicole E. Kaplan, Esq.
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CERTIFICATE OF FILING BY ESTTA

I, NOIRA SHINE, hereby certify that this correspondence is being filed electronically via ESTTA with the United States Patent and Trademark Office, PO BOX 1451, Alexandria, VA 22313-1451, ATTN: TTAB, on the date indicated below.

Date of Deposit: February 11, 2010

Noira Shine

Name:

CERTIFICATE OF SERVICE BY FIRST CLASS MAIL

I, Janice Romeo, hereby certify that a true and correct copy of the within PETITION FOR CANCELLATION is being served by first class mail and addressed to Respondent, on February 11, 2010, at the following address: Brixton, LLC d/b/a Brixton Ltd, 4040 Calle Platino #102, Oceanside, CA 92056

Janice Romeo

Name: